IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

EDGARDO MILLET-SANCHEZ

Plaintiff

v.

ACAA, et. al.

Defendants

CIVIL NO. 96-2052 (JAG)

REPORT AND RECOMMENDATION

Plaintiff Edgardo Millet Sánchez (hereinafter "Millet") filed the present lawsuit against several co-defendants, including co-defendant Dr. Luis A. González Alonso on August 28, 1996. Plaintiff Millet asserts that co-defendant González Alonso discriminated against him by refusing to provide him with medical treatment because of his disability, thus violating Title III of the Americans with Disabilities Act (hereinafter "ADA"). Plaintiff Millet also brings forth various supplemental state law claims. (See Docket No. 127, Amended Complaint).

Co-defendant González-Alonso filed a motion for summary judgment on December 21, 2000. (Docket No. 94). A memorandum of law in support of the summary judgment motion and the requisite 311.12 statement were filed on December 27, 2000. (Docket No. 97). Plaintiff Millet filed his opposition on February 27, 2001. (Docket No. 110). In addition, plaintiff Millet filed a memorandum of law relative to the issue of his status as a "disabled" individual under the ADA. (See Docket No. 111). Co-defendant González filed a reply to plaintiff's opposition on June 5, 2001. (Docket No. 131). The matter was referred for report and recommendation June 29, 2001. (Docket No. 133).

SUMMARY JUDGMENT STANDARD

Rule 56(c), of the Federal Rules of Civil Procedure, sets forth the standard for ruling on summary judgment motions: The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

136

show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). The critical question is whether a genuine issue of material fact exists. A genuine issue exists if there is sufficient evidence supporting the claimed factual dispute to require a choice between the parties' differing versions of the truth at trial. Morris v. Government Dev. Bank of Puerto Rico, 27 F.3d 746, 748 (1st Cir. 1994); LeBlanc v. Great Am. Ins. Co., 6 F.3d 836, 841 (1st Cir. 1993), cert. denied, 511 U.S. 1018 (1994). A fact is material if it might affect the outcome of the suit under the governing law. Morrisey v. Boston Five Cents Sav. Bank, 54 F.3d 27, 31 (1st Cir. 1995); Maldonando Denis v. Castillo-Rodríguez, 23 F.3d 576, 581 (1st Cir. 1994). On a motion for summary judgment, the court must view all evidence and related inferences in the light most favorable to the nonmoving party. See Springfield Terminal Ry. v. Canadian Pac. Ltd., 133 F.3d 103, 106 (1st Cir. 1997). Nonetheless, the court is free to "ignore 'conclusory allegations, improbable inferences and unsupported speculation.'" Súarez v. Pueblo International, Inc., 229 F.3d 49, 53 (1st Cir. 2000) (citing Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990)).

In order to aid the court in the daunting task of searching for genuine issues of material fact in the record, this district adopted Local Rule 311.12. See, e.g., Corrada Betances v. Sea-Land Service, Inc., 248 F.3d 40, 43-44 (1st Cir. 2001); Morales v. Orssleff's EFTE, 246 F.3d 32, 33-35 (1st Cir. 2001); Ruiz Rivera v. Riley, 209 F.3d 24, 27-28 (1st Cir. 2000). This rule, requires, in relevant part, that a party moving for summary judgment submit, in support of the motion, "a separate, short concise statement of material facts as to which the moving party contends there is no genuine issue to be tried and the basis of such contention as to each material fact, properly supported by specific reference to the record." D.P.R.R. 311.12.

It is clearly established in this District that compliance with Local Rule 311.12 is critical, given that the Court will only consider the facts alleged in the aforementioned 311.12 statements when entertaining the movant's arguments. See Rivera de Torres v. Telefónica de Puerto Rico, 913 F.Supp. 81, 85 (D.P.R. 1995). In the instant case, both parties have failed to fully comply with the requirements of Local Rule 311.12, given that there are multiple statements of fact that have no specific reference to the record. Without specific references to the record the list of uncontested

facts is worthless, given that "[t]he Court [is forced] to continue to ferret through the record, read all the answers to the interrogatories, study all the attached documents, and carefully scrutinize all the depositions for lurking genuine issues of material fact." Dominguez v. Eli Lilly & Co., 958 F.Supp. 721, 727 (D.P.R. 1997)(citing Stepanishen v. Merchants Despatch Transp. Corp., 722 F.2d 922, 930-931 (1st Cir. 1983).

In view that the parties, in particular the plaintiff, did not fully comply with the requirements of Local Rule 311.12, the Court will outline *only* the relevant facts of the case in the light most favorable to plaintiff Millet, based *solely* on those facts that contain references to the record. The court has also considered the relevant facts with references to the record contained in plaintiff's motion in opposition to co-defendant Dr. Santiago Ponce's Motion for Summary Judgment (Docket No. 74), given that plaintiff sought to incorporate those facts by reference and some of them were relevant to Millet's mental condition.

FACTUAL BACKGROUND

I. Plaintiff Millet's mental condition:

Mr. Millet's mental condition arose out of a work related accident in 1986 while working as a cook at Aurorita's Restaurant. (Docket No. 97, Millet's deposition of 1-27-01, p. 44)[1]. He received treatment for his mental condition on an ambulatory basis for three years at the Medical Health Clinic in Bayamón's Regional Hospital. (Id. at 42). Plaintiff Millet opted to stop his psychiatric treatment at the Medical Health Clinic in Bayamón, and instead began a relationship with a private psychiatrist, Dr. José Vázquez Sotomayor, on or about 1993. (Id. at 56; see also, Docket No. 110, Vázquez's deposition, p. 30).[2]

---

[1] The entire transcript of plaintiff Millet's depositions, to which both parties make multiple references in their 311.12 statements, is found at Docket No. 71, which is co-defendant Dr. Santiago Ponce's motion for summary judgment.

[2] Once again, the parties' 311.12 statements make references to Dr. Vázquez Sotomayor's deposition, which can be found in its entirety at Docket No. 71.

Mr. Millet has been diagnosed as having chronic paranoid schizophrenia and schizo-affective disorder.[3] Paranoid schizophrenia is psychotic illness in which a patient believes that the world wants to hurt him: the patient suffers from visual and auditory hallucinations, has attention problems, believes he is being persecuted, and at times is disoriented and outside reality. (Vázquez's deposition, p. 19). In addition, plaintiff Millet is said to suffer from agoraphobia, a condition whereby a person feels apprehensive about crowds or places. (Id. at 24). According to Dr. Vázquez, plaintiff Millet experiences high anxiety when surrounded by people, in crowded places and cannot wait under these conditions. (Id. at 80-82).

After Millet's first visit with Dr. Vázquez in May of 1993, he was prescribed Prozac, Xanax (anxiolitic), Aldol (anti-psychotic), Restoril (hymnotic), and Pamelor (anti-depressant). (Id. at 27, 38-39). By July 1993, Dr. Vázquez recommended that plaintiff Millet be hospitalized through the State Insurance Fund (Id. at 27-28), and referred Mr. Millet to be hospitalized at Mepsi Center. (Id. at 44). By 1995, Dr. Vázquez's diagnosis of plaintiff Millet had not changed; thus Millet continued taking the anti-psychotic drug Aldol or Risperdal,as well as Xanax, Dalmane and Pamelor. (Id. at 56). By 1996, Dr. Vázquez diagnosed Mr. Millet with schizo-affective disorder, and thus ordered him to continue with his medications. (Id. at 70). By early 1996, Millet began to present symptoms related to both, affective disorders and schizophrenia. (Id. at 73). Dr. Vázquez has stated that a patient like Millet, who is psychotic and suffers from hallucinations, de-personalization and schizoid states, may not necessarily have an altered perception of reality. Sometimes he does; sometimes he does not. (Id. at 79).

Dr. Vázquez's medical records show that in 1997, 1998, 1999 and 2000, Mr. Millet experienced severe psychosis, severe depression, severe insomnia, and severe anxiety. (Docket No. 110, Exhibit 5, Dr. Vázquez's medical records). The Social Security Administration rendered Millet totally disabled to work because of "primary diagnosis of schizophrenia, paranoia and other

---

[3] Schizo-affective disorder is a mental illness that presents schizoid symptoms such as hallucinations, de-personalization, schizoid states, and de-realizations. (Docket No. 110, Dr. Vázquez's deposition, p. 16). Schizo-affective disorder is like a mix of both schizophrenia and major depression. (Id. at 18).

psychotic disorders." (Docket No. 110, Exhibit 6).

II. The car accident and the subsequent ACAA referrals:

On August 28, 1995, Millet was involved in a car accident. After the accident, he was taken to the Bayamón Regional Hospital were he was X-rayed and a cast was placed on his right leg. In addition he was given ACAA's papers so that he would go to said agency the next Monday. (Millet's deposition of 2-9-00 at p. 91). At ACAA he was referred to Dr. Rufino Montañez (Id. at 119). According to plaintiff Millet, Dr. Montañez sent ACAA a note including his diagnosis, the need for emergency surgery, and the fact that Millet had an emotional condition which needed to be taken into account. (Millet's deposition of 2-10-00 at 44). It appears form the record that Millet returned to ACAA for various reasons: (1) because Dr. Montañez explained to him that he could select a physician form the list provided by ACAA (Millet's deposition of 2-10-00 at 44-45); (2) because he had a crisis at the office of Dr. Montañez and the doctor understood that plaintiff's emotional crisis required special attention (Id. at 48); and, (3) because Dr. Montañez operated his patients at Bayamón Regional Hospital and that location was inconvenient for plaintiff and his family. (Id. at 49). After going back to ACAA, plaintiff Millet was referred to Dr. González Alonso, the co-defendant in the present lawsuit.

III. The encounter at Dr. González Alonso's office:

Dr. González Alonso, a physician with a specialty in the field of orthopaedics, has maintained a contractual relationship with ACAA since 1986. (Docket No. 97, González's deposition, pgs. 6, 9). As previously mentioned, on or about September 11, 1995, ACAA referred plaintiff Millet to the offices of Dr. González for treatment. (Id. at pg. 9). Dr. González's first encounter with plaintiff Millet occurred after hearing a commotion outside his office, and being told by his secretary that there was a patient demanding to be seen before the other patients, allegedly because he could not be surrounded by people.[4] Dr. González proceeded to instruct his secretary to

---

[4] It appears that upon arriving at Dr. González's office Millet was told to place his name on the list and wait in the crowded waiting area. Millet then stated to the doctor's staff that he wanted to be treated differently because he suffered from agoraphobia and eventually entered into a crisis and locked himself in the bathroom. He was then told to come out because the doctor

let plaintiff Millet into his office. (Id. at 31). Upon questioning by Dr. González, plaintiff Millet explained that he was disabled due to a nervous condition, and he could not tolerate being surrounded by people. (Id. at 33). Dr. González alleges that the reason why he called plaintiff Millet into his office was to establish if indeed he needed to be accommodated before the rest of the patients who had been waiting for a longer period of time. In fact, Dr. González admits that after reviewing the relevant information he had reason to believe that plaintiff Millet was correct in demanding a special accommodation. (Id. at 36 and 51).

Dr. González was able to ascertain from plaintiff's records that Dr. Montañez, who had seen plaintiff Millet on September 1, 1995, had concluded that Millet suffered from a right ankle displaced fracture and that his right leg needed orthopedic surgery. (Id. at 47- 48). After speaking with Millet, Dr. González concluded that he was unable to treat the plaintiff because he was afraid that he would not be able to control him after a surgical procedure, especially in light of the likelihood that he had a displaced fracture, as Dr. Montañez had noted in his report. (Id. at p.52-53). Dr. González told Millet that, in his opinion, he would be better served by going to a multi-disciplinary center, such as the Puerto Rico Medical Center, where there would be multiple specialists on a full time basis to serve his special needs. (Id. at 53).

Dr. González did not physically examine Millet. Nonetheless, as a result of his conversation with the plaintiff and the revision of his medical documents, Dr. González proceeded to inform ACAA that Millet's orthopaedic condition was related to a car accident. (Id. at 57, 61). In his personal progress notes, Dr. González wrote that Millet was a psychiatric patient in need of psychiatric follow-up while in the hospital, and that he agreed with Dr. Montañez's determination that the patient be referred to the Bayamón Regional Hospital. (Id. at 64, 81 and 84). He further noted that Millet did not take any medication nor had x-rays available. (Id. at 64). Dr. González did not bill ACAA for his services since he had decided that he could not treat the patient. (Id. at 69).

ACAA then referred Mr. Millet to Dr. César Cintrón Valle on October 2, 1995. (Cintrón's deposition, p. 15). Personnel form ACAA spoke with Dr. Cintrón and in general terms explained

---

would see him. (Millet's deposition of 2-10-00 at p. 56; Marta Rodríguez's deposition of 5-22-00 at p. 40).

that Millet needed medical attention; that he was suffering from a nervous condition and was unable to wait for treatment; and, that they needed to know whether he could see him and evaluate him promptly. (Id. p. 16). Finally, plaintiff Millet's fractured foot was operated by Dr. Cintrón at the Hospital San Francisco.

IV. Facts about plaintiff Millet's condition of agoraphobia and its effect on his daily life activities

Throughout his extensive deposition, Mr. Millet repeatedly testified about the symptoms of his psychiatric condition, and how his symptoms allegedly limit and hamper his capacity to live without breaking into an emotional crisis, to work, to relate to others and to function on a daily basis. However, plaintiff Millet makes scant and generalized statements about how his mental condition affect his daily activities. Moreover, several of his 311.12 statements, even lack appropriate references to the record.

Plaintiff Millet alleges that his ability to deal with people is severely limited by his mental condition. It is Millet's contention that he has been forced to look for work alternatives where he does not have to deal with the public. Mr. Millet expressed: "People bother me." Since I cannot work for anyone, I breed Yorkies in my house." (Docket No. 74, Exhibit 20). Mr. Millet derives income from breeding his dogs: a female and male Yorkies. (Docket No. 74, Exhibit 21).[5] Mr. Millet also provides catering and buffet services (Docket No. 74, Exhibit 22); but he is only able to do so when his mental health is "stable."[6] Millet states that when he is not stable "he cannot even deal with his dogs". (Docket No. 74, Exhibit 22).

Mr. Millet stated in his deposition that he is limited by his symptoms of agoraphobia on a daily basis. Sometimes it even limits his ability to go to his home's patio. (Docket No. 74, Exhibit 23). He further states that even when medicated he suffers symptoms. (Docket No. 74, Exhibit 24).

---

[5] Even though plaintiff Millet's 311 statement included in Docket No. 74, it is mentioned that this breeding business is plaintiff's *one* source of income, a reading of plaintiff's deposition reveals that this statement is incorrect and misleading.

[6] Mr. Millet is not personally present at the place where catering services are offered. He does not personally supervise the activity. He shows up at the site to receive payment. (Docket No. 74, Exhibits 22 and 23).

Therefore, his wife takes care of a lot of things. (Id.). Millet further stated that of all the conditions he suffers, agoraphobia has been the hardest to deal with due to the confinement, the feeling of isolation, the phobia about people, and the panic attacks he suffers when he around people. (Docket No. 74, Exhibit 28).

Mr. Millet alleges that his capacity to use public transportation is limited by his psychiatric condition; thus his parents and friends take him to his medical appointments. Millet has stated that he can use public transportation when medicated, but that sometimes the medication may not prevent him from suffering from symptoms. "Sometimes I have to get off [public transportation] in the middle of the way and keep walking, no matter where I am going." (Docket No. 74, Exhibit 35). Even though Mr. Millet had a drivers license he cannot drive when medicated. (Docket No. 74, Exhibit 36). However, Millet has been able to drive in the continental United States because the "roads are wider, there is less noise, less things to increase [his] stress level." (Docket No. 74, Exhibit 36 and 37). Mr. Millet is committed to taking his medication. (Docket No. 74, Exhibit 38).

DISABILITY UNDER THE ADA

Title III of the American with Disabilities Act ("ADA"), which prohibits discrimination on the basis of disability in public accommodations operated by private entities, was enacted primarily to facilitate disabled individuals' access to such places. See, e.g., DeBord v. Board of Educ. of Ferguson-Florissant Sch. Dist., 126 F.3d 1102, 1106 (8th Cir. 1997), cert. denied, 523 U.S. 1073 (1998). The Act reads as follows:

> No individual shall be discriminated against on the basis of disability, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). See also, Montalvo v. Radcliffe, 167 F.3d 873, 876 (4th Cir. 1999). To establish liability under this section, plaintiff Millet must prove that he: (1) has a disability; (2) was discriminated against on the basis of that disability; (3) was thereby denied goods or services; (4) by a place of public accommodation by the owner or operator of that facility. See Sharrow v.

Bailey, 910 F.Supp.187, 191 (M.D. Pa. 1995). The "professional office of a health care provider" is considered a "place of public accommodation" under Title III of the ADA. See 42 U.S.C. § 12181(7)(F).

The ADA defines "disability" as follows:

> (A) *a physical or mental impairment that substantially limits one or more of the major life activities of such individual*;
> (B) a record of such an impairment; or
> (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2)(emphasis ours). Plaintiff has not alleged in any of his motions opposing defendants' motions for summary judgment that he has a record of impairment, or that he was regarded by others as having an impairment. Rather, Millet suggests that he is disabled because he has a mental impairment that substantially limits a major life activity. Defendant, Dr. González, in turn, argues that plaintiff Millet has not set forth enough proof that he is disabled within the meaning of the ADA.

"The determination of whether an individual is disabled under the ADA is made on an individualized, case-by-case basis." Reeves v. Johnson Controls World Servs., Inc., 140 F.3d 144, 151 (2nd Cir. 1998). The Supreme Court has discussed the three requirements that plaintiff must fulfill to show that he is "disabled" under the ADA.[7] See Bragdon v. Abbott, 524 U.S. 624, 632-939 (1998). See also Bercovitch v. Baldwin School, Inc., 133 F.3d 141, 155 (1998) . First, plaintiff Millet must have a "physical or mental impairment". Id. at 632. Second, Millet must assert that a

---

[7] EEOC regulations provide additional guidance regarding the interpretation of the three main components of the term "disability": "physical or mental impairment," "substantially limits," and "major life activities." See Sutton v. United Air Lines, 527 U.S. 471, 479-80 (1999)(discussing 29 C.F.R. § 1630.2(h)-(j)). A "mental impairment" includes "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 29 C.F.R. § 1630.2(h)(2). The EEOC construes the phrase "substantially limits" to mean that the person is: "(i) unable to perform a major life activity that the average person in the general population can perform; or (ii) significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. §1630.2(j)(1).

"major life activity"[8] is affected by the impairment. Id. at 637. Third, the impairment must be "a substantial limit on the major life activity [plaintiff Millet] asserts." Id. at 639. When considering these factors, the Court must also make reference to corrective measures, such as medication. See Sutton v. United Air Lines, Inc., 527 U.S. 471, 488 (1999). Whether a plaintiff has a disability under 42 U.S.C. § 12102(2)(A) must be evaluated by taking into account any mitigating measures available to plaintiff. See Taylor v. Phoenixville School District, 184 F.3d 296, 302 (3rd Cir. 1999).

The parties do not dispute, and the Court does not see any reason to question, that plaintiff Millet's ailments (Chronic Paranoid Schizophrenia, Schizo-affective Disorder, and Agoraphobia) constitute "mental impairments" for purposes of the ADA. See, e.g., Reeves v. Johnson Controls World Services, 140 F.3d at 150 (agoraphobia constitutes a "mental impairment" for purpose of the ADA). The contested issue is whether Millet's mental impairments "substantially limit" one or more "major life activities." 42 U.S.C. § 12102(2).

In determining whether plaintiff's impairment substantially limits a major life activity, the Supreme Court has stressed that courts should "determine the existence of disabilities on a case-by-case basis." Albertsons, Inc. v. Kirkingburg, 527 U.S. 555, 566 (1999). To make this individualized assessment, the Court must first identify the specific life activity or life activities which are "substantially limited" by plaintiff Millet's mental disorders.[9] In his opposition to co-defendant

---

[8] "Major life activit[ies]" include "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." See 28 C.F.R. § 35.104. See also Reeves v. Johnson Controls World Servs., Inc., 140 F.3d at 150.

[9] See, e.g., Lawson v. CSX Transportation, Inc., 245 F.3d 916, 924-926 (7th Cir. 2001)(there was enough evidence in the record from which a jury could find that plaintiff, who had diabetes, was substantially limited in his ability to fulfill the major life activity of eating). See also Reeves v. Johnson Controls, Inc., 140 F.3d at150 (plaintiff's panic disorder with agoraphobia did not qualify under the ADA, as plaintiff failed to demonstrate that such condition substantially limited a major life activity); Bercovitch v. Baldwin School, Inc., 133 F.3d at1 55-56 (plaintiff, who suffered from a learning disability, "ADHD", failed to meet his burden of showing that his condition substantially limited a major life activity); Roberts v. New York Dept. of Correctional Services, 63 F.Supp.2d 272, 285 (W.D. New York 1999)(plaintiff failed to demonstrate that his condition of alcoholism substantially interfered with a major life activity and thus failed to establish a prima facie case of discrimination under the ADA).

González's motion for summary judgment, plaintiff Millet has failed to mention with specificity which particular life activity is substantially limited by his mental impairments. Millet tends to make a generalized claim that his entire life is affected by his condition. A very favorable interpretation of Millet's motions might suggest that he is limited by his mental disorder in his ability to work and in his ability to be in places were there are lots of people. The court has not been able to find case law, nor the plaintiff points to any, were the ability to be in a place were there are lots of people is considered to be a major life activity.[10]

The issue of whether Millet's ability to work is limited by his mental disorders has been somewhat discussed in the record. True enough, the record suggest that Millet can not perform some jobs, and in fact he was found to be disabled by the Social Security Administration.[11] However, there is ample evidence in the record, which Millet does not contest, suggesting that he indeed works both as a dog breeder and managing a catering service. In the instant case, plaintiff Millet has failed to present any specific evidence from which a jury could possibly find that his impairment substantially limits one or more major life activities. The conclusory allegations and generalized statements made by plaintiff Millet as to difficulties which he endures as a consequence of his condition are not sufficient to survive co-defendant González's motion for summary judgment.[12]

Given that the Court finds that plaintiff Millet has not set forth evidence in support of his contention that he is a "disabled individual" under the ADA, the collateral matters of whether Millet was taking his medication thus mitigating the effects of his symptoms, and of whether Dr. González

---

[10] In fact, the only similar life activity that the court has been able to ascertains is that of having relationships with other people, i.e., socialization. However, not only is there case law casting doubt as to whether socialization can be considered a major life activity under the ADA, (see Herscheft v. The New York Bd. of Elections, 2001 WL 940923 (E.D.N.Y. 2001)), but plaintiff Millet is married as has failed to present evidence suggesting that he is unable to socialize and/or relate to others.

[11] The record is not clear as to when exactly was the determination of disability made by the SSA. In fact, the record suggest that this determination was made after the incident leading to this lawsuit.

was justified in referring him to some other physician due to his alleged inability to deal with a patient with severe emotional complications (see, e.g., Lesley v. Hee Man Chie, M.D., 250 F.3d 47, 53-54 (1st Cir. 2001)) warrant no further discussion.

CONCLUSION

In view of the aforementioned, this Court recommends that co-defendant González's motion for summary judgment (Docket No. 94) be **GRANTED**. Plaintiff Millet's ADA claims and his supplemental law claims against the co-defendant should be **DISMISSED** in their entirety.

Under the provisions of Rule 510.2, Local Rules, District of Puerto Rico, any party who objects to this report and recommendation must file a written objection thereto with the Clerk of the Court within ten (10) days of the party's receipt of this report and recommendation . The written objection must specifically identify the portion of the recommendation, or report to which objection is made and he basis for such objections. Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985); Davet v. Maccorone, 973 F. 2d 22, 30-31 (1st Cir. 1992).

At San Juan, Puerto Rico this 3rd day of January, 2002.

GUSTAVO A. GELPI
United States Magistrate-Judge

s/cs:to (6) attys/pts in ICMS

JAN - 8 2002